

HOUSE BILL REPORT

HB 2983

As Reported by House Committee On: Transportation

Title: An act relating to the establishment of a new marine pilotage tariff setting process.

Brief Description: Establishing a new marine pilotage tariff setting process.

Sponsors: Representative Clibborn.

Brief History:

Committee Activity:

Transportation: 2/5/18, 2/6/18 [DPS].

Brief Summary of Substitute Bill

- Transfers the authority to set marine pilotage tariffs for the Puget Sound Pilotage District from the Board of Pilotage Commissioners (Board) to the Utilities and Transportation Commission (UTC).
- Requires the UTC to ensure that the marine pilotage tariffs it sets are fair, just, reasonable, and sufficient.
- Allows any person with a substantial interest in marine pilotage tariffs, including marine pilots and shippers, to file a revised proposed tariff with the UTC.
- Authorizes the UTC to include reasonable costs for setting tariff rates as part of the tariff.
- Authorizes a port district to establish rules of service, rates, and pilotage tariffs, requiring the port district to file these tariffs with the UTC and the Board.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Clibborn, Chair; Fey, Vice Chair; Wylie, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Chapman, Gregerson, Hayes, Irwin,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Pike, Riccelli, Rodne, Shea, Stambaugh, Tarleton, Valdez, Van Werven and Young.

Staff: Jennifer Harris (786-7143).

Background:

Board of Pilotage Commissioners.

The Board of Pilotage Commissioners (Board) is comprised of a chairperson, who is either the Assistant Secretary of Marine Operations of the Washington State Department of Transportation (WSDOT) or the Assistant Secretary's designee and an employee of the WSDOT's marine division; the Director of the Department of Ecology or the Director's designee; and seven other members appointed by the Governor and confirmed by the Senate. The Board is charged with providing for the maintenance of efficient and competent pilotage service on the waters of the Puget Sound Pilotage District and the Grays Harbor Pilotage District.

The Board is responsible for:

1. issuing training licenses and pilot licenses to pilot applicants;
2. maintaining a comprehensive training and evaluation program for pilot applicants;
3. overseeing additional training requirements, including for continuing education;
4. maintaining a register of pilots, records of pilot accidents, and other pertinent information;
5. determining the number of licensed pilots needed;
6. annually setting pilotage tariffs;
7. filing an annual report with the chairs of the transportation committees of the Legislature and with the Governor; and
8. providing for the maintenance of pilotage services on all waters where it is required.

In setting pilotage tariffs, the Board is permitted to fix extra compensation for: extra services to vessels in distress, awaiting vessels, all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage, being carried to sea on vessels against the will of the pilot, and other services as determined by the Board. The Board may consider pilot retirement plan expenses incurred in the prior year in either pilotage district. Under no circumstances may the state be obligated to fund or pay for any portion of retirement payments for pilots or retired pilots.

Pilots are licensed in the state for a term of five years and must pay an annual license fee to the State Treasurer in an amount set by the Board by rule. The Board is prohibited from increasing the annual license fee (and has been since June 30, 2011). The Board is authorized to pay stipends to pilot trainees. The Board is also authorized to assess penalties and fines for certain specified violations in the performance of pilotage duties, the unlicensed piloting of vessels under state pilotage laws, and other violations of state pilotage laws.

Pilotage Districts.

Compulsory pilotage applies to all foreign vessels not exempted in state law that travel in the waters of the Puget Sound Pilotage District or the Grays Harbor Pilotage District. The Puget Sound Pilots, a private organization, contracts with pilots licensed by the Board to provide pilotage services in the Puget Sound Pilotage District. The Port of Grays Harbor (Port) currently employs pilots licensed by the Board to provide pilotage services in the Grays Harbor Pilotage District. The Port is authorized to recommend rules of service, rates, and tariffs governing its pilotage services to the Board for consideration. The rules, rates, and tariffs recommended by the Port must have been approved in open meetings of the port district.

Marine Pilotage Study.

In the 2017-2019 Transportation Budget, the Legislature tasked the Joint Transportation Committee (JTC) with overseeing a consultant study of marine pilotage in the state, with the goal of recommending best practices for an analytically driven pilotage tariff and fee-setting process; determination of the total number of pilots and pilot workload; pilot recruitment, training, review, and selection, with a focus on increasing pilot diversity; and selection of governance structures for the oversight and management of pilotage activities.

The *Washington State Pilotage Final Report and Recommendations* (2018), the output of this study, included a recommendation to transfer rate-setting authority to the Utilities and Transportation Commission (UTC). This recommendation was identified in the report as the preferred approach.

Utilities and Transportation Commission.

The UTC's Commission is composed of three members appointed by the Governor for a term of six years, with the consent of the Senate. No more than two members of the Commission may belong to the same political party. The UTC regulates the following in the public interest, as provided by state law:

- persons engaging in the transportation of persons or property within the state for compensation; and
- rates, services, facilities, and practices of all persons engaging within the state in the business of supplying utility services or commodities to the public for compensation.

The UTC is authorized to make rules and regulations to carry out its duties.

The UTC may appoint administrative law judges when necessary for its general administration. The administrative law judges may: administer oaths; issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony; examine witnesses; make findings of probable cause and issue complaints in the name of the UTC; and receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under UTC-adopted rules.

Initial orders of administrative law judges become final on the day following expiration of the time established by the UTC for filing a petition for administrative review, unless, within that time, a party petitions for administrative review or the UTC notifies parties that it will review the initial order on its own motion.

Summary of Substitute Bill:

Puget Sound Pilotage District Tariffs.

The authority to set marine pilotage tariffs for the Puget Sound Pilotage District is transferred from the Board to the UTC. The UTC may adopt rules or issue orders to implement tariff setting. The Board is required to assist the UTC, at its request, in its performance of pilotage tariff-setting functions.

The UTC must ensure that it sets tariff rates that are fair, just, reasonable, and sufficient, considering the infrastructure and equipment assets; the nature of business operations; safety equipment and training; and investments necessary to maintain efficient, safe, and competent pilotage service and operations. As part of its tariff-setting responsibilities, the UTC is required to maintain a list of persons who have requested to be notified of any change in pilotage tariffs and in any proposed rules related to the setting of pilotage tariffs.

In carrying out its tariff-setting duties, the UTC may assign an administrative law judge to oversee the proceedings and prepare an initial order, which the UTC may review. The UTC may also assign an administrative law judge as a facilitator for settlement purposes. The UTC is authorized to adopt rules and issue orders to implement tariff setting.

Any person with a substantial interest in marine pilotage tariffs, which includes a licensed pilot or group of pilots and a vessel operator or other person or organization utilizing the services of a licensed pilot and paying pilotage tariffs (as well as any person or business that can show that requested tariff changes would be likely to have a substantial economic impact on it), may file a revised proposed tariff with the UTC. The proposed tariff is required to be accompanied by an explanation of why the existing tariffs are not fair, just, reasonable, and sufficient, along with financial information to demonstrate a need for the tariff revision, as well as any other information required by the UTC. If the petitioner proposes a tariff with an annual or periodic adjustment, information must be provided that justifies the automatic adjustment.

After receipt of a petition in the proper form, the UTC must give notice to interested persons that have informed the UTC of their desire to be notified when such a petition is submitted. Any person with a substantial interest may submit comments in support or opposition of the petition within 20 days of the notice. The filed proposed tariff takes effect on its stated effective date unless the UTC suspends it for a period of up to 10 months. During this time, the UTC is permitted to set the matter for hearing or for consideration at an open public meeting. The burden of proof to show that tariff rates are not fair, just, reasonable, and sufficient is on the person that files the revised tariff.

The UTC must encourage alternative forms of dispute resolution to resolve disputes between an association or group of pilots and any other person with a substantial interest in tariff setting.

In setting tariffs, the UTC must include a tariff surcharge to fund the stipend the Board is authorized to pay to pilot trainees and to use in its pilot training program under current state law, as well as a means of funding the self-insurance liability premium expenditures of the Board through the 2023 fiscal year to the extent payment contribution is required of the Board by the Legislature. The UTC is authorized to include, as part of the tariff, reasonable costs for setting tariff rates. The UTC's costs for tariff setting must be appropriated from the Marine Pilotage Tariff Setting Account (account), which is created in the State Treasury. Expenditures from the account may only be used for the purposes of UTC marine pilotage tariff setting.

By December 1, 2018, the UTC is required to submit to the transportation committees of the Legislature any additional statutory changes necessary for implementation of the UTC's tariff-setting process. Additionally, by July 1, 2020, the UTC must provide a report to the Governor and the transportation committees of the Legislature to address matters related to establishing the tariff, which is required to compare the process and outcomes to the recommendations made in the January 2018 JTC marine pilotage report.

Grays Harbor Pilotage District Tariffs.

A port district is authorized to establish rules of service, rates, and pilotage tariffs, provided that they are approved in open meetings 30 or more days after published notice in a newspaper of general circulation and following a public hearing. Board approval is no longer required for these rules of service, rates, and pilotage tariffs. A port district that establishes pilotage tariffs is required to release its pilotage budget, including its five-year capital spending plan, prior year's pilotage financial statement, and the proposed pilotage tariff, no later than 30 days prior to a public hearing. It must also receive public comments for 30 days prior to adopting and approving pilotage tariffs.

The Grays Harbor Pilotage District must include a pension charge in its tariff until its pilot retirement agreement expenses for Grays Harbor Pilotage District pilots employed prior to October 1, 2001, is no longer in effect, and must deposit revenue collected for this purpose into an account maintained solely for these pilot retirement expenses. The pension charge must be sufficient to cover the costs associated with expenses mandated by the pilot retirement agreement. The Grays Harbor port district may not be obligated to fund or pay any portion of these retirement expenses.

A port district that establishes pilotage tariffs must file the tariffs with the UTC and the Board no later than 30 days following the approval of the tariff by the port district commission.

Substitute Bill Compared to Original Bill:

The substitute bill authorizes a port district to establish rules of service, rates, and pilotage tariffs, requiring that they be approved in open meetings 30 or more days after published notice in a newspaper of general circulation and following a public hearing. It requires a port district that establishes pilotage tariffs to release its pilotage budget, including its five-year capital spending plan, prior year's pilotage financial statement, and the proposed pilotage tariff, no later than 30 days prior to a public hearing; and to receive public comments for 30 days prior to adopting and approving pilotage tariffs. It also requires a port district that

establishes pilotage tariffs to file the tariffs with the UTC and the Board no later than 30 days following the approval of the tariff by the port district commission.

The substitute bill mandates that Grays Harbor Pilotage District include a pension charge in its tariff until its pilot retirement agreement expenses for Grays Harbor Pilotage District pilots employed prior to October 1, 2001, is no longer in effect, and that the Grays Harbor Pilotage District deposit revenue collected for this purpose into an account maintained solely for these pilot retirement expenses.

The substitute bill clarifies that any person who pilots a vessel under state law and is unlicensed to do so must pay to the Board pilotage rates established by the UTC, but not any fees established by the Board (since none will be applicable). It also clarifies that the UTC, in setting tariffs, must include a tariff surcharge to fund the stipend the Board is authorized to pay to pilot trainees and to use in its pilot training program under current state law, as well as funding for the self-insurance liability premium expenditures of the Board through the 2023 fiscal year to the extent payment contribution is required of the Board by the Legislature.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 9, 2018.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2019, except for section 16, relating to granting the UTC the authority to adopt rules for the tariff-setting process, which takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Board serves an important function; however, the UTC is the more appropriate place for tariff setting to occur. This bill implements the recent pilotage study's recommendations, which are supported by both the shipping industry and pilots. This transfer of responsibilities will eliminate uncertainty for pilots and will help to attract a diverse pool of capable pilot applicants to the area. Pilots and the shipping industry are working collaboratively to ensure that this remains the best pilotage district in the country.

This bill is an important development in public policy. However, the Grays Harbor Pilotage District is distinct from the Puget Sound Pilotage District and is managed differently than it. In the Grays Harbor Pilotage District, pilots are direct employees of the Port, and, as such, are compensated and supervised by the Port. The Port has made capital investments to support pilotage, and it currently has an open and balanced process for setting tariffs and has been setting tariffs for some time. For it, a second process for setting rates through the UTC would be redundant. Retirement benefits for pilots who retired prior to 2001 have been included in the tariff for a number of years and should continue to be.

(Opposed) None.

(Other) This bill would transfer to the UTC a rate-setting process that is consistent with rate setting the UTC does in other areas. The same process and standard of review that is in place for other industries would be applied to pilotage rate setting.

The Board has a long history of setting tariffs and fees and believes that it can continue setting them and improve that process. The Oregon model could be used, which would require the Board to rely on an administrative law judge from the UTC to assist it in tariff setting.

Even if the Board no longer has tariff-setting responsibility, it will continue to serve an important role. A separate account should be funded and maintained for this purpose.

Persons Testifying: (In support) Representative Clibborn, prime sponsor; Scott Hazlegrove, Pacific Merchant Shipping Association; Eric Von Brandenfels, Puget Sound Pilots; and James Thompson, Washington Ports.

(Other) Jay Balasbas, Washington Utilities and Transportation Commission; and Sheri Tonn, Board of Pilotage Commission.

Persons Signed In To Testify But Not Testifying: None.